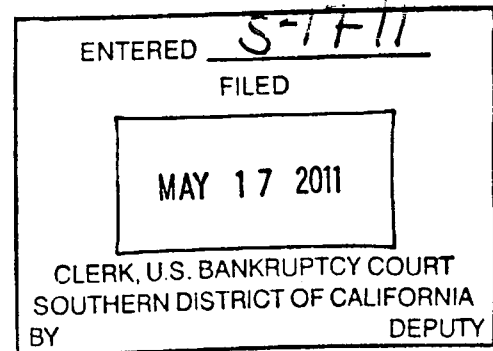


WRITTEN DECISION - NOT FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

| | | |
|-------------------------------|---|------------------------|
| In re |) | Case No. 10-00046-PB11 |
| |) | |
| SARGENT RANCH, LLC, |) | ORDER ON TRUSTEE'S |
| A CALIFORNIA LIMITED COMPANY, |) | BORROWING MOTION |
| |) | |
| Debtor. |) | |
| |) | |

Before the Court is the motion to authorize superpriority borrowing, filed by the Chapter 11 trustee. The trustee seeks to borrow the sum of \$808,000, in two phases. The first would yield \$350,000 and the second, if sequentially authorized would yield an additional \$325,000. The remainder of the loan would constitute prepaid interest and fees. The term of the loan is for one year, at 11% interest, and a default rate of interest of 15%, after maturity if the loan is not sooner repaid. The proposed lender is an assignee of one of the creditors in this case, which claims to hold interest positions in both the first and second trust deeds on the property.

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1 Section 364 of Title 11, United States Code, provides in
2 relevant part:

3 (d)(1) The court, after notice and a
4 hearing, may authorize the obtaining of
5 credit or the incurring of debt secured by a
6 senior or equal lien on property of the
7 estate that is subject to a lien only if -

8 (A) the trustee is unable to obtain
9 such credit otherwise; and
10 (B) there is adequate protection of the
11 interest of the holder of the lien on
12 the property of the estate on which such
13 senior or equal lien is proposed to be
14 granted.

15 (2) In any hearing under this subsection,
16 the trustee has the burden of proof on the
17 issue of adequate protection.

18 A group of creditors secured by interests in the first trust
19 deed (representing 14 - 18% of the total first trust deed
20 creditors) oppose the Chapter 11 trustee's motion, arguing the
21 interests of the first trust deed holders would be eroded by
22 granting a priority lien over theirs without any adequate
23 protection of their interest.

24 The Chapter 11 trustee is in an almost impossible position.
25 This case was filed January 4, 2010. In April, 2010 the debtor
26 tried to get approval of a superpriority priming lien, which
the Court did not approve. Subsequently, because of the seeming
overwhelming distrust in the case, the debtor sought to hire an
outside company to pursue financing and developing a plan for
exploitation of some or all of the debtor's contiguous 6400 acres
of raw land. That did not accomplish the avowed goal, and on
December 17, 2010 the parties present in open court stipulated to

1 appointment of a Chapter 11 trustee. A very experienced
2 developer was selected by the United States Trustee and an
3 order appointing him was signed by the Court.

4 The threshold problem has been, and remains that the estate
5 has no cash in it to do anything. At the same time the parties
6 and the Court wanted a Chapter 11 trustee to take charge, the
7 trustee has not been provided with any of the necessary
8 wherewithal to move the case toward any form of reorganization.
9 And the threshold issue for the trustee has been to try to find
10 out what the potential assets of the estate are. That takes
11 funding for disinterested analysts and appraisers to assess.
12 So the trustee and his counsel have worked hard to find funding
13 to take those first steps which, seemingly, would inure to the
14 benefit of all the creditors, including the first trust deed
15 interest holders. Indeed, the trustee thought the structure of
16 an agreement had been agreed upon, but apparently not.

17 The Chapter 11 trustee advances two arguments why the Court
18 should approve borrowing on terms the same or better than those
19 offered by Enderly's assignee. First, he argues that the senior
20 secured creditors should be held to have consented by virtue of
21 a majority not having timely filed opposition, and recognizing
22 that under applicable California law and the applicable Operating
23 Agreement a majority has the authority to act for the group.
24 Since the majority have been silent, they should be deemed to
25 have consented under the Court's Local Rules. The Court is
26 loathe to so hold in the instant circumstances.

1 The trustee's second argument is that obtaining expert
2 analysis of remunerative uses to which the real property may be
3 put enhances its value in virtually any direction because it
4 moves the property closer to some sort of use, even if it rules
5 out other theoretically possible uses. It is still an analysis
6 someone else will not have to spend money to do in the future.
7 Indeed, it is interesting to note that the proposed loan
8 agreement describes as collateral not just the superpriority
9 secured lien on the real property, but also the reports and
10 analyses performed on the property.

11 The Court believes there is support for and merit in the
12 trustee's second argument. However, the record is silent on
13 the extent to which, if at all, the value of the property will
14 be increased quantitatively by borrowing to fund the analyses.
15 Nor does the record show that the value of the property will
16 be increased sufficiently to afford the senior secured creditors
17 the adequate protection that § 364 requires.

18 The Court is mindful that this case, which has been pending
19 over 16 months, has not brought forth any third party, or any
20 creditor or group of creditors, who asserts belief in the
21 economic viability of this property. No one has stepped forward
22 with any proposal to fund even the modest first steps the trustee
23 proposes without all sorts of guarantees. To be sure, Enderly
24 has made a proposal to loan \$808,000 for one year at 11%
25 interest, plus points and a commitment fee, but in addition
26 Enderly wants a superpriority secured lien ahead of all others

1 in a property valued at the low end at over \$9 million. So
2 Enderly would be oversecured approximately 12 times over. As
3 noted, the loan term would be one year, with prepaid interest
4 and, if not paid in full in one year, the default interest rate
5 of 15% kicks in. That, despite the record which indicates there
6 would be no cash flow from a sand quarry operation for over two
7 years even if the project were begun right now. And, on top of
8 that, Enderly wants a breakup fee of up to \$20,000 if someone
9 else offers the estate a more preferable loan.

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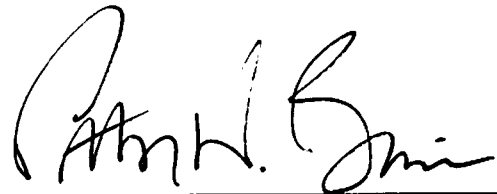
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1 Based on all the foregoing, together with the stated
2 opposition to the presently proposed loan, the Court will not
3 approve the trustee's motion on its present terms. Given the age
4 of this case, and the lack of cooperation and progress in support
5 of a Chapter 11 trustee, who was appointed at the request of many
6 of the parties who now handcuff him financially from being able
7 to do anything to advance the case, the Court hereby gives notice
8 that unless a borrowing agreement is reached in the interim, on
9 June 20, 2011 at 4 p.m. this court will hear argument on its own
10 motion to convert this case to one under Chapter 7. If any
11 agreement is reached, it will not be approved by the Court if it
12 includes any purported breakup fee. The Court believes Enderly
13 acted prudently in waiting to prepare the loan documents until it
14 appeared an agreement had been reached. Nevertheless, as Enderly
15 has pointed out, it was not the stalking horse proposer, but
16 rather offered more favorable terms than another. Breakup fees
17 in this situation are not warranted.

18 IT IS SO ORDERED.

19 DATED: MAY 17 2011

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22 PETER W. BOWIE, Chief Judge
23 United States Bankruptcy Court
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re Case No. 10-00046-PB11

CERTIFICATE OF MAILING


The undersigned, a regularly appointed and qualified clerk in the Office of the United States Bankruptcy Court for the Southern District of California, at San Diego, hereby certifies that a true copy of the attached document, to wit:

ORDER ON TRUSTEE'S
BORROWING MOTION

was enclosed in a sealed envelope bearing the lawful frank of the Bankruptcy Judges and mailed to each of the parties at their respective address listed below:

See attached list.

Said envelope(s) containing such document were deposited by me in a regular United States mail box in the City of San Diego, in said district on May 17, 2011.


Barbara J. Kelly, Judicial Assistant

Certificate of Mailing
Case No. 10-00046-PB11

May 17, 2011
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